

ASSEMBLY BILL

No. 1610

Introduced by Assembly Member Wolk

February 22, 2005

An act to amend Sections 33054, 47605, and 47612.5 of, and to add Section 47612.6 to, the Education Code, relating to charter schools.

LEGISLATIVE COUNSEL'S DIGEST

AB 1610, as introduced, Wolk. Charter schools.

(1) Existing law, the Charter Schools Act of 1992, requires a charter school to comply with the provisions of its charter and the laws pertaining to charter schools and exempts charter schools from the laws governing school districts, with specified exceptions. Existing law authorizes the governing board of a charter school to request, and the State Board of Education to approve, a waiver of any otherwise applicable provisions of law until July 1, 2005, with certain requirements.

Existing law requires a charter school to meet the same criteria that a school district is required to meet when it requests a waiver, except that the chartering authority is required to conduct a public hearing no later than 90 days following receipt of the waiver request, and requires the charter school to hold a public hearing prior to submitting the waiver request directly to the State Board of Education if the chartering authority fails to hold its public hearing within the time required.

This bill would require a charter school to simultaneously submit a waiver application to its chartering authority and the State Board of Education, thereby creating a state-mandated local program. The bill would delete the requirement that the chartering authority conduct a public hearing within 90 days of the receipt of the waiver, and would

instead provide that a chartering authority may hold a public hearing and make a recommendation on the waiver within 30 days of the receipt of the request.

The bill would require the State Department of Education to contact the charter school to determine if there are objections to the waiver request, with certain requirements. The bill would extend the operation of these provisions indefinitely.

(2) Existing law permits teachers, parents, pupils, and community members to petition the governing board of a school district to approve a charter school to operate independently from the existing school district structure as a method of accomplishing, among other things, improved pupil learning.

The bill would require a charter school to notify and provide the district of residence of a pupil who is expelled or leaves the charter school without graduating or completing the school year for any reason with a copy of the cumulative record of that pupil, thereby creating a state-mandated local program.

(3) Existing law requires a charter school to offer, at a minimum, a specified number of minutes of instruction for the appropriate age levels, to maintain written, contemporaneous records that document all pupil attendance and to make these records available for audit and inspection.

This bill would prohibit the State Board of Education or the Superintendent of Public Instruction from waiving these requirements, but would permit the waiver of fiscal penalties incurred due to such a violation, with certain requirements.

(4) This bill would also make various technical, nonsubstantive changes to existing law.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 33054 of the Education Code is amended to read:

33054. (a) The governing board of a charter school may request, and the State Board of Education may approve, a waiver of any otherwise applicable provisions of this code pursuant to this article. To be eligible to request a waiver, a charter school shall *simultaneously* submit its application for a waiver to its chartering authority, *the department, and the State Board of Education*. The governing board of the chartering authority ~~shall may hold the a public hearing and make a recommendation on the waiver request no later than 90 30 days following receipt of the request. If the chartering authority fails to hold the public hearing within the 90 days, the charter school shall hold a public hearing prior to submitting the waiver request directly to the State Board of Education. If the chartering authority is a school district or county board of education, it shall prepare a summary of the public hearing to be forwarded with the waiver request to the State Board of Education. If the school district or county board of education recommends against approval of the waiver request, it shall set forth the reasons for its disapproval in written documentation that shall be forwarded to the state board. The department shall contact the chartering authority to determine if there exist objections to the waiver request and shall summarize any objections to the State Board of Education prior to its decision on whether to grant that waiver request.~~

(b) For purposes of this article, a charter school shall be deemed to be a “school district” that is eligible to submit a waiver application pursuant to this section.

(c) A charter school shall meet the same criteria that a school district is required to meet when it requests a waiver, ~~except that the chartering authority shall conduct the public hearing, as required pursuant to subdivision (a).~~

~~(d) This section shall become inoperative on July 1, 2005, and as of January 1, 2006, is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.~~

SEC. 2. Section 47605 of the Education Code is amended to read:

1 47605. (a) (1) Except as set forth in paragraph (2), a petition
2 for the establishment of a charter school within any school
3 district may be circulated by any one or more persons seeking to
4 establish the charter school. A petition for the establishment of a
5 charter school shall identify a single charter school that will
6 operate within the geographic boundaries of that school district.
7 A charter school may propose to operate at multiple sites within
8 the school district, as long as each location is identified in the
9 charter school petition. The petition may be submitted to the
10 governing board of the school district for review after either of
11 the following conditions are met:

12 (A) The petition has been signed by a number of parents or
13 guardians of pupils that is equivalent to at least one-half of the
14 number of pupils that the charter school estimates will enroll in
15 the school for its first year of operation.

16 (B) The petition has been signed by a number of teachers that
17 is equivalent to at least one-half of the number of teachers that
18 the charter school estimates will be employed at the school
19 during its first year of operation.

20 (2) ~~In the case of a A petition for the establishment of a charter~~
21 ~~school through the conversion of that proposes to convert an~~
22 ~~existing public school; to a charter school that would not be~~
23 ~~eligible for a loan pursuant to subdivision (b) of Section 41365;~~
24 ~~the petition~~ may be circulated by any one or more persons
25 seeking to establish the ~~converted~~ charter school. The petition
26 may be submitted to the governing board of the school district for
27 review after the petition has been signed by not less than 50
28 percent of the permanent status teachers currently employed at
29 the public school to be converted.

30 (3) A petition shall include a prominent statement that a
31 signature on the petition means that the parent or guardian is
32 meaningfully interested in having his or her child, or ward, attend
33 the charter school, or in the case of a teacher's signature, means
34 that the teacher is meaningfully interested in teaching at the
35 charter school. The proposed charter shall be attached to the
36 petition.

37 (4) After receiving approval of its petition, a charter school
38 that proposes to establish operations at one or more additional
39 sites ~~within the jurisdictional boundaries of the school district~~
40 shall request a material revision to its charter and shall notify the

1 ~~governing board of the school district authority that granted its~~
2 ~~charter of those additional locations. The governing board of the~~
3 ~~school district authority that granted its charter~~ shall consider
4 whether to approve those additional locations at an open, public
5 meeting. If the additional locations are approved ~~by the~~
6 ~~governing board of the school districts~~, they shall be a material
7 revision to the charter school's charter.

8 (5) Notwithstanding subdivision (a), a charter school that is
9 unable to locate within the jurisdiction of the chartering school
10 district may establish one site outside the boundaries of the
11 school district, but within the county within which that school
12 district is located, if the school district ~~where within whose~~
13 ~~jurisdiction~~ the charter school proposes to operate is notified in
14 advance of the charter petition approval, the county
15 superintendent of schools and the Superintendent ~~of Public~~
16 ~~Instruction~~ are notified of the location of the charter school
17 before it commences operations, and either of the following
18 circumstances exist:

19 (A) The school has attempted to locate a single site or facility
20 to house the entire program, but ~~such a facility or a site or facility~~
21 is unavailable in the area in which the school chooses to locate.

22 (B) The site is needed for temporary use during a construction
23 or expansion project.

24 (6) Commencing January 1, 2003, a petition to establish a
25 charter school may not be approved to serve pupils in a grade
26 level that is not served by the school district of the governing
27 board considering the petition, unless the petition proposes to
28 serve pupils in all of the grade levels served by that school
29 district.

30 (b) No later than 30 days after receiving a petition, in
31 accordance with subdivision (a), the governing board of the
32 school district shall hold a public hearing on the provisions of the
33 charter, at which time the governing board of the school district
34 shall consider the level of support for the petition by teachers
35 employed by the district, other employees of the district, and
36 parents. Following review of the petition and the public hearing,
37 the governing board of the school district shall either grant or
38 deny the charter within 60 days of receipt of the petition,
39 provided, however, that the date may be extended by an
40 additional 30 days if both parties agree to the extension. In

1 reviewing petitions for the establishment of charter schools
2 pursuant to this section, the chartering authority shall be guided
3 by the intent of the Legislature that charter schools are and
4 should become an integral part of the California educational
5 system and that establishment of charter schools should be
6 encouraged. A school district governing board shall grant a
7 charter for the operation of a school under this part if it is
8 satisfied that granting the charter is consistent with sound
9 educational practice. The governing board of the school district
10 shall not deny a petition for the establishment of a charter school
11 unless it makes written factual findings, specific to the particular
12 petition, setting forth specific facts to support one or more of the
13 following findings:

14 (1) The charter school presents an unsound educational
15 program for the pupils to be enrolled in the charter school.

16 (2) The petitioners are demonstrably unlikely to successfully
17 implement the program set forth in the petition.

18 (3) The petition does not contain the number of signatures
19 required by subdivision (a).

20 (4) The petition does not contain an affirmation of each of the
21 conditions described in subdivision (d).

22 (5) The petition does not contain reasonably comprehensive
23 descriptions of all of the following:

24 (A) (i) A description of the educational program of the school,
25 designed, among other things, to identify those whom the school
26 is attempting to educate, what it means to be an “educated
27 person” in the 21st century, and how learning best occurs. The
28 goals identified in that program shall include the objective of
29 enabling pupils to become self-motivated, competent, and
30 lifelong learners.

31 (ii) If the proposed school will serve high school pupils, a
32 description of ~~how~~ *the manner in which* the charter school will
33 inform parents about the transferability of courses to other public
34 high schools and the eligibility of courses to meet college
35 entrance requirements. Courses offered by the charter school that
36 are accredited by the Western Association of Schools and
37 Colleges may be considered transferable and courses approved
38 by the University of California or the California State University
39 as creditable under the “A” to “G” admissions criteria may be
40 considered to meet college entrance requirements.

1 (B) The measurable pupil outcomes identified for use by the
2 charter school. “Pupil outcomes,” for purposes of this part,
3 means the extent to which all pupils of the school demonstrate
4 that they have attained the skills, knowledge, and attitudes
5 specified as goals in the school’s educational program.

6 (C) The method by which pupil progress in meeting those
7 pupil outcomes is to be measured.

8 (D) The governance structure of the school, including, but not
9 limited to, the process to be followed by the school to ensure
10 parental involvement.

11 (E) The qualifications to be met by individuals to be employed
12 by the school.

13 (F) The procedures that the school will follow to ensure the
14 health and safety of pupils and staff. These procedures shall
15 include the requirement that each employee of the school furnish
16 the school with a criminal record summary as described in
17 Section 44237.

18 (G) The means by which the school will achieve a racial and
19 ethnic balance among its pupils that is reflective of the general
20 population residing within the territorial jurisdiction of the school
21 district to which the charter petition is submitted.

22 (H) Admission requirements, if applicable.

23 (I) The manner in which annual, independent, financial audits
24 shall be conducted, which shall employ generally accepted
25 accounting principles, and the manner in which audit exceptions
26 and deficiencies shall be resolved to the satisfaction of the
27 chartering authority.

28 (J) The procedures by which pupils can be suspended or
29 expelled.

30 (K) The manner by which staff members of the charter schools
31 will be covered by the State Teachers’ Retirement System, the
32 Public Employees’ Retirement System, or federal social security.

33 (L) The public school attendance alternatives for pupils
34 residing within the school district who choose not to attend
35 charter schools.

36 (M) A description of the rights of any employee of the school
37 district upon leaving the employment of the school district to
38 work in a charter school, and of any rights of return to the school
39 district after employment at a charter school.

1 (N) The procedures to be followed by the charter school and
2 the entity granting the charter to resolve disputes relating to
3 provisions of the charter.

4 (O) A declaration whether or not the charter school shall be
5 deemed the exclusive public school employer of the employees
6 of the charter school for the purposes of the Educational
7 Employment Relations Act (Chapter 10.7 (commencing with
8 Section 3540) of Division 4 of Title 1 of the Government Code).

9 (P) A description of the procedures to be used if the charter
10 school closes. The procedures shall ensure a final audit of the
11 school to determine the disposition of all assets and liabilities of
12 the charter school, including plans for disposing of any net assets
13 and for the maintenance and transfer of pupil records.

14 (c) (1) Charter schools shall meet all statewide standards and
15 conduct the pupil assessments required pursuant to Section
16 60605 and any other statewide standards authorized in statute or
17 pupil assessments applicable to pupils in noncharter public
18 schools.

19 (2) Charter schools shall, on a regular basis, consult with their
20 parents, *guardians*, and teachers regarding the school's
21 educational programs.

22 (d) (1) In addition to any other requirement imposed under
23 this part, a charter school shall be nonsectarian in its programs,
24 admission policies, employment practices, and all other
25 operations, shall not charge tuition, and shall not discriminate
26 against any pupil on the basis of ethnicity, national origin,
27 gender, or disability. Except as provided in paragraph (2),
28 admission to a charter school shall not be determined according
29 to the place of residence of the pupil, or of his or her parent or
30 guardian, within this state, except that any existing public school
31 converting partially or entirely to a charter school under this part
32 shall adopt and maintain a policy giving admission preference to
33 pupils who reside within the former attendance area of that
34 public school.

35 (2) (A) A charter school shall admit all pupils who wish to
36 attend the school.

37 (B) However, if the number of pupils who wish to attend the
38 charter school exceeds the school's capacity, attendance, except
39 for existing pupils of the charter school, shall be determined by a
40 public random drawing. Preference shall be extended to pupils

1 currently attending the charter school and pupils who reside in
2 the district except as provided for in Section 47614.5. Other
3 preferences may be permitted by the chartering authority on an
4 individual school basis and only if consistent with the law.

5 (C) In the event of a drawing, the chartering authority shall
6 make reasonable efforts to accommodate the growth of the
7 charter school and, in no event, shall take any action to impede
8 the charter school from expanding enrollment to meet pupil
9 demand.

10 (3) *If a pupil is expelled or leaves the charter school without*
11 *graduating or completing the school year for any reason, the*
12 *charter school shall notify the superintendent of the school*
13 *district in which the pupil resides within 14 days, and shall*
14 *provide that school district with a copy of the cumulative record*
15 *of the pupil, including a transcript of grades or report card, and*
16 *health information. This paragraph applies only to pupils subject*
17 *to compulsory full-time education pursuant to Section 48200.*

18 (e) ~~No~~The governing board of a school district shall *not*
19 require any employee of the school district to be employed in a
20 charter school.

21 (f) ~~No~~The governing board of a school district shall *not*
22 require any pupil enrolled in the school district to attend a charter
23 school.

24 (g) The governing board of a school district shall require that
25 the petitioner or petitioners provide information regarding the
26 proposed operation and potential effects of the school, including,
27 but not limited to, the facilities to be utilized by the school, the
28 manner in which administrative services of the school are to be
29 provided, and potential civil liability effects, if any, upon the
30 school and upon the school district. The description of the
31 facilities to be used by the charter school shall specify where the
32 school intends to locate. The petitioner or petitioners shall also be
33 required to provide financial statements that include a proposed
34 first-year operational budget, including startup costs, and
35 cashflow and financial projections for the first three years of
36 operation.

37 (h) In reviewing petitions for the establishment of charter
38 schools within the school district, the school district governing
39 board shall give preference to petitions that demonstrate the
40 capability to provide comprehensive learning experiences to

1 pupils identified by the petitioner or petitioners as academically
2 low achieving pursuant to the standards established by the ~~State~~
3 ~~Department of Education~~ *department* under Section 54032.

4 (i) Upon the approval of the petition by the governing board of
5 the school district, the petitioner or petitioners shall provide
6 written notice of that approval, including a copy of the petition,
7 to the applicable county superintendent of schools, the ~~State~~
8 ~~Department of Education~~ *department*, and the State Board of
9 Education.

10 (j) (1) If the governing board of a school district denies a
11 petition, the petitioner may elect to submit the petition for the
12 establishment of a charter school to the county board of
13 education. The county board of education shall review the
14 petition pursuant to subdivision (b). If the petitioner elects to
15 submit a petition for establishment of a charter school to the
16 county board of education and the county board of education
17 denies the petition, the petitioner may file a petition for
18 establishment of a charter school with the State Board of
19 Education, and the state board may approve the petition, in
20 accordance with subdivision (b). Any charter school that receives
21 approval of its petition from a county board of education or from
22 the State Board of Education on appeal shall be subject to the
23 same requirements concerning geographic location that it would
24 otherwise be subject to if it receives approval from the entity to
25 whom it originally submits its petition. A charter petition that is
26 submitted to either a county board of education or to the State
27 Board of Education shall meet all otherwise applicable petition
28 requirements, including the identification of the proposed site or
29 sites where the charter school will operate.

30 (2) In assuming its role as a chartering agency, the State Board
31 of Education shall develop criteria to be used for the review and
32 approval of charter school petitions presented to the State Board
33 of Education. The criteria shall address all elements required for
34 charter approval, as identified in subdivision (b) ~~of Section~~
35 ~~47605~~ and shall define “reasonably comprehensive” as used in
36 paragraph (5) of subdivision (b) ~~of Section 47605~~ in a way that is
37 consistent with the intent of the ~~Charter Schools Act of 1992~~ *this*
38 *part*. Upon satisfactory completion of the criteria, the State Board
39 of Education shall adopt the criteria on or before June 30, 2001.

1 (3) A charter school for which a charter is granted by either
2 the county board of education or the State Board of Education
3 based on an appeal pursuant to this subdivision shall qualify fully
4 as a charter school for all funding and other purposes of this part.

5 (4) If either the county board of education or the State Board
6 of Education fails to act on a petition within 120 days of receipt,
7 the decision of the governing board of the school district, to deny
8 a petition shall, thereafter, be subject to judicial review.

9 (5) The State Board of Education shall adopt regulations
10 implementing this subdivision.

11 (6) Upon the approval of the petition by the county board of
12 education, the petitioner or petitioners shall provide written
13 notice of that approval, including a copy of the petition to the
14 ~~State Department of Education~~ *department* and the State Board
15 of Education.

16 (k) (1) The State Board of Education may, by mutual
17 agreement, designate its supervisory and oversight
18 responsibilities for a charter school approved by the State Board
19 of Education to any local education agency in the county in
20 which the charter school is located or to the governing board of
21 the school district that first denied the petition.

22 (2) The designated local education agency shall have all
23 monitoring and supervising authority of a chartering agency,
24 including, but not limited to, powers and duties set forth in
25 Section 47607, except the power of revocation, which shall
26 remain with the State Board of Education.

27 (3) A charter school that has been granted its charter through
28 an appeal to the State Board of Education and elects to seek
29 renewal of its charter shall, prior to expiration of the charter,
30 submit its petition for renewal to the governing board of the
31 school district that initially denied the charter. If the governing
32 board of the school district denies the school's petition for
33 renewal, the school may petition the State Board of Education for
34 renewal of its charter.

35 (l) Teachers in charter schools shall ~~be required to~~ hold a
36 Commission on Teacher Credentialing certificate, permit, or
37 other document equivalent to that which a teacher in other public
38 schools would be required to hold. These documents shall be
39 maintained on file at the charter school and ~~shall be~~ *are* subject
40 to periodic inspection by the chartering authority. It is the intent

1 of the Legislature that charter schools be given flexibility with
2 regard to noncore, noncollege preparatory courses.

3 (m) A charter school shall transmit a copy of its annual,
4 independent, financial audit report for the preceding fiscal year,
5 as described in subparagraph (I) of paragraph (5) of subdivision
6 (b), to its chartering entity, the Controller, the county
7 superintendent of schools of the county in which the charter
8 school is sited, unless the county board of education of the
9 county in which the charter school is sited is the chartering
10 entity, and the ~~State Department of Education~~ department by
11 December 15 of each year. This subdivision ~~shall~~ does not apply
12 if the audit of the charter school is encompassed in the audit of
13 the chartering entity pursuant to Section 41020.

14 SEC. 3. Section 47612.5 of the Education Code is amended to
15 read:

16 47612.5. (a) Notwithstanding any other provision of law and
17 as a condition of apportionment, a charter school shall do all of
18 the following:

19 (1) ~~Offer~~ For each fiscal year, offer, at a minimum, the same
20 following number of minutes of instruction set forth in paragraph
21 (3) of subdivision (a) of Section 46201 for the appropriate grade
22 levels.:

23 (A) To pupils in kindergarten, 36,000 minutes.

24 (B) To pupils in grades 1 to 3, inclusive, 56,400 minutes.

25 (C) To pupils in grades 4 to 8, inclusive, 54,000 minutes.

26 (D) To pupils in grades 9 to 12, inclusive, 64,800 minutes.

27 (2) Maintain written contemporaneous records that document
28 all pupil attendance and make these records available for audit
29 and inspection.

30 (3) Certify that its pupils have participated in the state testing
31 programs specified in Chapter 5 (commencing with Section
32 60600) of Part 33 in the same manner as other pupils attending
33 public schools as a condition of apportionment of state funding.

34 (b) Notwithstanding any other provision of law and except to
35 the extent inconsistent with this section and Section 47634.2, a
36 charter school that provides independent study shall comply with
37 Article 5.5 (commencing with Section 51745) of Chapter 5 of
38 Part 28 and implementing regulations adopted thereunder. The
39 State Board of Education shall adopt regulations that apply this
40 article to charter schools. To the extent that these regulations

1 concern the qualifications of instructional personnel, the State
2 Board of Education shall be guided by subdivision (l) of Section
3 47605.

4 (c) A reduction in apportionment made pursuant to subdivision
5 (a) shall be proportional to the magnitude of the exception that
6 causes the reduction. For purposes of paragraph (1) of
7 subdivision (a), for each charter school that fails to offer pupils
8 the minimum number of minutes of instruction specified in that
9 paragraph, the Superintendent ~~of Public Instruction~~ shall
10 withhold from the charter school's apportionment for average
11 daily attendance of the affected pupils, by grade level, the sum of
12 that apportionment multiplied by the percentage of the minimum
13 number of minutes of instruction at each grade level that the
14 charter school failed to offer.

15 (d) (1) Notwithstanding any other provision of law and except
16 as provided in paragraph (1) of subdivision (e), a charter school
17 that has an approved charter may receive funding for
18 nonclassroom-based instruction only if a determination for
19 funding is made pursuant to Section 47634.2 by the State Board
20 of Education. The determination for funding shall be subject to
21 any conditions or limitations the State Board of Education may
22 prescribe. The State Board of Education shall adopt regulations
23 on or before February 1, 2002, that define and establish general
24 rules governing nonclassroom-based instruction that apply to all
25 charter schools and to the process for determining funding of
26 nonclassroom-based instruction by charter schools offering
27 nonclassroom-based instruction other than the
28 nonclassroom-based instruction allowed by paragraph (1) of
29 subdivision (e). Nonclassroom-based instruction includes, but is
30 not limited to, independent study, home study, work study, and
31 distance and computer-based education. In prescribing any
32 conditions or limitations relating to the qualifications of
33 instructional personnel, the State Board of Education shall be
34 guided by subdivision (l) of Section 47605.

35 (2) Except as provided in paragraph (2) of subdivision (b) of
36 Section 47634.2, a charter school that receives a determination
37 pursuant to subdivision (b) of Section 47634.2 is not required to
38 reapply annually for a funding determination of its
39 nonclassroom-based instruction program if an update of the
40 information the State Board of Education reviewed when initially

determining funding would not require material revision, as that term is defined in regulations adopted by the board. A charter school that has achieved a rank of 6 or greater on the Academic Performance Index for the two years immediately prior to receiving a funding determination pursuant to subdivision (b) of Section 47634.2 shall receive a five-year determination and is not required to annually reapply for a funding determination of its nonclassroom-based instruction program if an update of the information the State Board of Education reviewed when initially determining funding would not require material revision, as that term is defined in regulations adopted by the board. Notwithstanding any provision of law, the State Board of Education may require a charter school to provide updated information at any time it determines that a review of that information is necessary. The State Board of Education may terminate a determination for funding if updated or additional information requested by the board is not made available to the board by the charter school within a reasonable amount of time or if the information otherwise supports termination. A determination for funding pursuant to Section 47634.2 may not exceed five years.

(3) A charter school that offers nonclassroom-based instruction in excess of the amount authorized by paragraph (1) of subdivision (e) is subject to the determination for funding requirement of Section 47634.2 to receive funding each time its charter is renewed or materially revised pursuant to Section 47607. A charter school that materially revises its charter to offer nonclassroom-based instruction in excess of the amount authorized by paragraph (1) of subdivision (e) is subject to the determination for funding requirement of Section 47634.2.

(e) (1) Notwithstanding any other provision of law, and as a condition of apportionment, “classroom-based instruction” in a charter school, for the purposes of this part, occurs only when charter school pupils are engaged in educational activities required of those pupils and are under the immediate supervision and control of an employee of the charter school who possesses a valid teaching certification in accordance with subdivision (l) of Section 47605. For purposes of calculating average daily attendance for classroom-based instruction apportionments, at least 80 percent of the instructional time offered by the charter

1 school shall be at the schoolsite, and the charter school shall
2 require the attendance of all pupils for whom a classroom-based
3 apportionment is claimed at the schoolsite for at least 80 percent
4 of the minimum instructional time required to be offered
5 pursuant to paragraph (1) of subdivision (a) of Section 47612.5.

6 (2) For the purposes of this part, “nonclassroom instruction” or
7 “nonclassroom-based instruction” means instruction that does not
8 meet the requirements specified in paragraph (1). The State
9 Board of Education may adopt regulations pursuant to paragraph
10 (1) of subdivision (d) specifying other conditions or limitations
11 on what constitutes nonclassroom-based instruction, as it deems
12 appropriate and consistent with this part.

13 (3) For purposes of this part, a schoolsite is a facility that is
14 used principally for classroom instruction.

15 (4) *Notwithstanding any other provision of law, neither the*
16 *State Board of Education, nor the Superintendent may waive the*
17 *requirements of paragraph (1) of subdivision (a).*

18 SEC. 4. Section 47612.6 is added to the Education Code, to
19 read:

20 47612.6. (a) For fiscal penalties incurred as a result of
21 providing insufficient instructional minutes in the 2001-02 fiscal
22 year, or any preceding fiscal year, the State Board of Education
23 may waive subdivision (c) of Section 47612.5.

24 (b) (1) For fiscal penalties incurred as a result of providing
25 insufficient instructional minutes in the 2002-03 fiscal year, or
26 any subsequent fiscal year, the State Board of Education may
27 waive subdivision (c) of Section 47612.5 only if that charter
28 school agrees to maintain minutes of instruction equal to the
29 minimum number of minutes required in paragraph (1) of
30 subdivision (a) of Section 47612.2 and to increase those minutes
31 of instruction by the percentage of the minimum number of
32 minutes of instruction at each grade level that the charter school
33 failed to offer for twice the number of fiscal years that it failed to
34 comply with paragraph (1) of subdivision (a) of Section 47612.2.

35 (2) Compliance with paragraph (1) shall be verified in the
36 report of the annual audit of the charter school for each fiscal
37 year in which it is required to maintain additional time pursuant
38 to paragraph (1). If the audit report does not comply with this
39 paragraph, the waiver granted pursuant to subdivision (b) shall be
40 revoked and the charter school shall repay the amount of

1 apportionments that would have be reduced pursuant to
2 subdivision (c) of Section 47612.5, in accordance with Section
3 41344.

4 (c) It is the intent of the Legislature that charter schools make
5 up lost instructional minutes during the fiscal year in which the
6 loss occurred rather than seek a waiver under this section.

7 SEC. 5. If the Commission on State Mandates determines that
8 this act contains costs mandated by the state, reimbursement to
9 local agencies and school districts for those costs shall be made
10 pursuant to Part 7 (commencing with Section 17500) of Division
11 4 of Title 2 of the Government Code.